REMARKS

Reconsideration of the application, as amended, is respectfully requested.

Claim 1 has been amended to incorporate the subject matter of claim 2 and by replacing the term "cold water soluble black leaf tea" with the term "cold water infusible black leaf tea". The basis for the replacement of the term is in the application (page 1 line 4). The amended claims are certainly enabled by the specification and recite metes and bounds of the invention clearly and definitely.

Claims 1-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (GB 2 074 004; hereinafter R1) in view of Ganesan et al. (U.S. 2001/0033880; hereinafter R2).

R1 teaches mixing of tea with an acid to lower the pH so that the fermentation is carried at pH 4.3 to 5.0 range (page 1 column 1 lines 40-44). R1 at page 1 lines 62-64 teaches that "the acid can be employed alone or as a buffer solution e.g. Walpole's acetate buffer or McIlvaine's citric acid – phosphate buffer". Applicants respectfully disagree with the contention of the Examiner that "citric acid is mentioned as one of the acids of choice". The only organic acid mentioned is acetic acid. Furthermore, Example 1 of R1 also discloses addition of McIlvaine's citric acid – phosphate buffer, and not the addition of citric acid. Example 4 of R1 also does not disclose citric acid. Therefore, R1 does not disclose addition of citric acid, nor does it provide any hint, suggestion or motivation to one of ordinary skill in the art to use citric acid.

The pH of very dilute solution of citric acid 1 (0.005% by weight in water) is less than 3 (measured value of pH – 2.7) whereas the teaching of R1 is directed to use of acid/buffer such that the pH is in the range of 4.3 to 5.0. One of ordinary skill in the art clearly would have understood the difference between citric acid-phosphate buffer on one hand and citric acid on the other hand. One of ordinary skill in the art, starting from the teaching of R1 that the fermentation is to be carried out at a pH between 4.3 to 5.0, would

not have been led to substitute the citric acid-phosphate buffer of R1 with the citric acid of the present invention with a reasonable expectation of success. R2 discloses a modification of the traditional process for black tea manufacture by treating the tea leaves with a solubilizing compound including ascorbic acid or its salts in order to enhance the solubility of the black tea in cold water (paragraph 0022). R2 does not disclose citiric acid, malic acid, or salts thereof.

Therefore, one of ordinary skill in the art, by combining the teaching of R1 (fermentation at pH from 4.3 to 5.0) and R2 (treating tea leaves with ascorbic acid) would not have arrived at the present invention where pH lowering agent is selected from citric acid, malic acid or salts thereof. Consequently, it is respectfully requested that the rejection be reconsidered and withdrawn.

In light of the above amendments and remarks, it is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney kindly requests the Examiner to telephone at the number provided.

Respectfully submitted,
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